88-751 (2)

No.

Supreme Court, U.S.
FILED
NOV 8 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

CLARK ROWLAND,
Petitioner,

VS.

ALAMEDA COUNTY PROBATION DEPARTMENT,
Respondent.

On Writ of Certiorari to the Court of Appeal of the State of California, First Appellate District, Division Five

OPPOSITION TO REVISED PETITION FOR CERTIORARI

PETER W. DAVIS
(Counsel of Record)
MICHAEL J. LOEB
JOSEPH P. MASCOVICH
CROSBY, HEAFEY, ROACH & MAY
1999 Harrison Street
Oakland, CA 94612
(415) 763-2000
Attorneys for Respondent

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

5 pp

QUESTION PRESENTED

Did the Court of Appeal for the State of California correctly conclude that petitioner had failed to establish a prima facie case of intentional racial discrimination based on undisputed proof that petitioner unreasonably declined to interview for the job he sought?

PARTIES TO PROCEEDING

The only parties to the proceeding are petitioner, Clark W. Rowland, and respondent, the Probation Department for the County of Alameda, California. Respondent knows of no other entities within the meaning of Supreme Court Rule 28.1 that should be disclosed to enable the Honorable Justices of this Court to evaluate the possibility of recusal.

No. _____

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

CLARK ROWLAND,
Petitioner,

VS.

ALAMEDA COUNTY PROBATION DEPARTMENT,
Respondent.

On Writ of Certiorari to the Court of Appeal of the State of California, First Appellate District, Division Five

OPPOSITION TO REVISED PETITION FOR CERTIORARI

JURISDICTIONAL BASIS

Petitioner asserts jurisdiction under 28 U.S.C. Section 1257(3), but no conflict in the federal law or significant federal question is presented as required by Supreme Court Rule 17.1. On the contrary, this case involves nothing more than petitioner's unwillingness to accept the well-reasoned judgment of the Court of Appeal. That judgment is based upon well settled law, and nothing in the opinion is inconsistent with the standards this Court has established in discrimination cases.

STATEMENT OF THE CASE

The pertinent facts and history of the case are set forth in the opinion of the Court of Appeal at pages 8-20 of petitioner's appendix.

REASONS FOR DENYING THE WRIT

Review is unnecessary here because no part of the unpublished opinion of the Court of Appeal is at odds with the decisions by this Court regarding the standards for a prima facie case of employment discrimination. *See, e.g., Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 259 (1981); *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 576 (1976); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). As the Court of Appeal opinion shows, petitioner failed to establish a prima facie case because he refused without justification to interview for the job position he sought. (App. at 10-11) Under these circumstances, the relevant authority compelled entry of judgment for respondent. *Id.; Tagupa v. Board of Directors*, 633 F.2d 1309, 1311 (9th Cir. 1980); *Ibarbia v. Regents of University of California*, 191 Cal.App.3d 1318, 1328-1329 (1987). Petitioner's unfounded dissatisfaction with this conclusion does not present the type of issue this Court should resolve. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1955).

The other issues raised are equally undeserving of review. There is no principle of law which compelled the California trial court to follow Federal Rule of Civil Procedure 52 when it issued its findings of fact and conclusions of law simply because federal substantive law applied. Moreover, Rule 52 and the pertinent California statute, Code of Civil Procedure Section 632, in fact have very similar requirements. *Compare Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 422 (1943), *with Richter v. Walker*, 36 Cal.2d 634, 639 (1951), *Security Pacific Nat. Bank v. Chess*, 58 Cal.App.3d 555, 568 (1976). Consequently, petitioner does not—because he cannot—demonstrate how he was prejudiced in this case or how the goals of federal law would be impaired by application of this procedural statute.

Nor is there any conceivable reason for this Court to consider in the context of this action the scope of remedies available in a discrimination case. Since judgment was entered against petitioner, respondent never briefed that issue below, and the Court of Appeal had no reason to address the issue.

The petition should accordingly be denied because this Court is not the appropriate forum for petitioner to raise phantom issues and to reargue his version of the unique facts in this case.

DATED: November 8, 1988.

Respectfully submitted,

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By PETER W. DAVIS
Counsel of Record for Respondent